

## MASTER FIBER IRU CONVEYANCE, AND CONDUIT SHARING AGREEMENT

THIS MASTER FIBER IRU CONVEYANCE, AND CONDUIT SHARING AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the City of Lincoln, a Municipal Corporation (hereinafter referred to as "City"), and Unite Private Networks, LLC, a Missouri corporation (hereinafter referred to as "Unite").

WHEREAS, the City is organized and existing under and by virtue of Article XX of the Nebraska Constitution and possesses plenary power and authority over the use and occupation of the public rights of way within its corporate boundaries; and

WHEREAS, Unite desires to install, operate and maintain a private network upon or within certain public rights of way and within certain easements of the City; and

WHEREAS, Unite desires to also install fiber optic cable components of its private network within certain conduit owned by City which is presently not occupied by City, and is held exclusively for City's future use; and

WHEREAS, City is authorized to allow access to occupy such easements and conduits; and

WHEREAS, Unite has agreed to convey certain rights to use its private network facilities to City as described and set forth herein, in order to reasonably compensate the public for Unite's use of said public rights of way and easements by Unite and to compensate the City for the use of said unoccupied conduit owned by City; and

WHEREAS, the City and Unite have agreed to be bound by the terms and conditions set forth herein which shall govern Unite's use of the City's easements and the City's unoccupied conduit described above, and govern City's use of the network facilities;

NOW, THEREFORE, in consideration of the foregoing recitals and the terms, conditions and mutual promises set forth herein, the parties agree as follows:

### Article I - Definitions

As used in this Agreement, the following terms, phrases, and words shall be ascribed the following meanings, unless the context indicates otherwise. As used in this Agreement, , the word "shall" is mandatory, and the word "may" is permissive. Words not defined herein shall be given their common and ordinary meanings, consistent with the context in which such words are used and the purposes of this Agreement.

1. "Affiliate" means any person or entity that directly or indirectly controls or is

controlled by or is under common control with a party to this Agreement.

2. "Cable" shall mean all fiber optic cable now or hereafter owned or controlled by Unite located within the Jurisdiction as now or hereafter constituted.

3. "Facilities" means all physical components of Unite's private network located within the City's easements, including without limitation Cable, poles, wires, cables, pipes, underground conduits, ducts, equipment cabinets, manholes, handholes, vaults, fiber optic cables and devices, switches, routers, amplifiers, power supplies and other structures and appurtenances.

4. "Jurisdiction" shall mean within the easement areas of the City of Lincoln's pipeline facilities from Lincoln to the Ashland wellfields as now or hereafter constituted.

5. "City Conduit" shall mean the type and location of conduit granted to the Unite as provided in this agreement and Exhibit "A."

6. "Recipient Fibers" shall mean the number and type of optical fibers granted to City at all locations as provided in this Agreement and Exhibit "A."

7. "Rights of Way" shall mean the City's dedicated pipeline easements that run from Lincoln to the Ashland wellfields. The term shall not include any other property owned or leased by the City for any other proprietary, public or municipal use.

8. "Term" shall mean thirty (30) years from the date hereof.

9. "Underlying Rights" shall mean all deeds, leases, easements, pole sharing agreements and other interests by which the Unite is authorized to install, operate and maintain its private network upon any real or personal property, whether public or private.

## Article II – ROW

1. Subject to Unite's compliance at all times with all of the terms and conditions of this Agreement, all of City's ordinances, and all applicable local, state and federal laws, and further subject to the City's lawful exercise of its police power (including, but not limited to, zoning, subdivision, permit and building code requirements) and the City's prior and superior right to usage for municipal purposes, City hereby grants to Unite, insofar as it has or may have the requisite power and authority to do so, permission to make reasonable use of the Rights of Way and the City Conduit, pursuant to Exhibit A, to construct, install, operate and maintain the Facilities within the Jurisdiction; provided, however, that with respect to state highways, Unite must separately obtain consent from the Nebraska Department of Roads.

2. The permissions granted herein to make reasonable use of the Rights of Way shall not be deemed to be a franchise, nor an exclusive license or right, and the City reserves the right

to make or grant a similar use of the Rights of Way to any other person or persons.

3. The City retains the following rights in regard to this agreement:

(a) To terminate this agreement for misuse, non-use or failure of Unite to comply with the provisions hereof.

(b) To use, control and regulate the use of the City streets, roads, easements, other public places and the Rights of Way, and the space above and beneath the same; and

(c) To require the removal or relocation of any of the Facilities from the Rights of Way if necessary or desirable, in the sole judgment of the City, for any public or municipal purpose or project, at Unite's sole cost and expense (or its proportionate share of expense if the Unite shares Facilities with other parties). Unite may abandon any segment where a removal or relocation is required pursuant to the procedure in LMC 5.17.

4. Unite or the City may, upon one year prior written notice, elect to surrender and Terminate this agreement and all rights thereunder. Upon the effective date of termination, the Term of this Agreement shall end, Unite's rights to use of public rights of way shall cease, and City's right to use Recipient Fibers shall terminate.

#### Article III - Scope; Prohibition Against Providing Cable Services

This Agreement confers only the right to make reasonable use of the Rights of Way for Unite's provision of its private network and it is expressly conditioned that the Unite shall not operate as a "cable operator" as that term is defined under federal law (47 U.S.C. §522(5)), nor shall it provide or offer to provide "cable services" as that term is defined under federal law (47 U.S.C. §522(6)), without proper local, state, and federal authorization, as required by law.

#### Article IV - Sales and Use Tax

1. Unite agrees to obtain a sales and use tax license from the City and to comply with all provisions.

2. To the extent Unite's sale of private network services or sale or lease of fiber to its customers is taxable, Unite shall collect such taxes from its customer and promptly remit same to the appropriate entity.

3. To the extent Unite provides telecommunication services, Unite shall be subject to the City's Telecommunication Occupation tax, 3.24.080 et.seq.

#### Article V - Use of Rights of Way

1. Facilities shall be located, installed and maintained so that none of the Facilities

endanger the lives, health or safety of persons, or interfere with any public improvements the City or other governmental entities (including any storm water, sanitary sewer or water utilities or enterprises) have in place or may deem proper to make, nor shall the location, installation or maintenance of the Facilities hinder or obstruct the free use of the streets or other public ways. All Facilities shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners of property which adjoins any Right of Way.

2. Prior to commencement of construction of any portion of its private network within the City right-of-way, Unite shall furnish to the City the general schematic plans for its Facilities, including, route maps, depiction, sketch or renderings of its equipment boxes and structures, engineering, traffic control, and landscaping plans. Such plans and reports may be reviewed by the City to ensure, (a) that all applicable laws including building and zoning codes and air and water pollution regulations are complied with, (b) that aesthetic and good planning principles have been given due consideration, and (c) that adverse impact on the environment has been minimized. Unite shall comply with all regulatory requirements of the City and shall incorporate all other reasonable changes to its plans requested by the City.

3. All construction, excavation, maintenance and repair work done by Unite shall be done in a workmanlike and expeditious manner which minimizes the inconvenience to the City, the general public and individuals. Unite shall be liable for any damage to the City or City owned property caused by Unite's failure to act in a timely manner. All such construction, excavation, maintenance and repair work done by Unite shall comply with all applicable codes of the City and the State of Nebraska, and Unite shall be responsible for obtaining all applicable permits and licenses. The City shall have the right to inspect all construction or excavation work to insure compliance with applicable codes and permits, and may order Unite to perform corrective work. All public and private property disturbed by Unite's activities shall be promptly restored by Unite at its expense to substantially its former condition, subject to inspection by the City's Director of Public Works or his designee and compliance by Unite with reasonable remedial action required by said official pursuant to the inspection. Unite shall be liable to City for the full cost of restoring any public property not promptly remedied by Unite as required by said official.

4. Within the City limits, the installation, maintenance, renovation and replacement of Facilities by Unite shall be subject to regulation by City through LMC 5.17, including but not limited to, (a) the location of Facilities in or upon the streets, alleys and dedicated easements, (b) the disturbance and reconstruction of pavement, sidewalks, and surface of streets, alleys, dedicated easements and driveways, (c) the timing and scheduling of work, and (d) the temporary closure of portions of streets and alleys. All Facilities shall be designed and installed so as to cause a minimal amount of interference with public property, water mains, sewer mains, electric and natural gas facilities, street lights, traffic signals, and all other municipal or authorized public use of the Rights of Way. The City's Director of Public Works may direct and require Unite to locate its Facilities within a defined telecommunications corridor within any street or other Right of Way or otherwise at a specific location to minimize interference with other facilities or utilities. Unite shall install and maintain its Facilities in such manner as to

minimize interference with trees, natural features and vegetation.

5. City agrees to process all of Unite's applications for construction permits in an expeditious manner. To that end, the City will endeavor to complete the processing of such applications within 15 business days unless the application is incomplete, requires further information or raises additional questions. If additional information is needed or questions occur, the City will attempt to complete that effort within 30 business days.

#### Article VI - Additional City Regulation

1. The City expressly reserves its right and duty to adopt, from time to time, in addition to the provisions herein contained, such charter provisions, ordinances and rules and regulations as may be deemed necessary by the City to promote the health, safety and welfare of its inhabitants and their property.

#### Article VII - Coordination and Conduit/Pole Sharing

1. In order to minimize disruption to vehicular traffic and inconvenience to the public, and to enable the limited width of Rights of Way to be apportioned among all utilities, holders of permits and other interests needing to locate or maintain facilities in the Rights of Way for the benefit of the public, it is imperative that any conduit sharing be encouraged to the greatest extent possible. In furtherance of such purposes, Unite agrees, wherever feasible, that it shall cooperate with City in placing conduit within the Rights of Way and in sharing unused space within underground conduits owned by Unite, and upon any poles or other above ground facilities owned by Unite. Whenever the City or Unite intends to install new underground conduit or replace existing underground conduit in City controlled rights of way, each party shall endeavor, whenever feasible, to provide the other party with forty-five (45) days advance written notice in order to permit the additional contemporaneous installation of conduit. If either party desires additional conduit installed, it will so notify the other party who shall be responsible for the additional incremental expense for installing such additional conduit.

#### Article VIII - Special Indemnification Arising from Facilities

1. Unite shall install, construct, maintain and operate its private network in a safe manner providing reasonable protection against injury or damage to any and all persons or property. Unite specifically agrees to indemnify, defend and hold City harmless from all claims, costs, demands, suits, costs of defense and judgments which arise from, in whole or in part, Unite's acts or omissions pursuant to this Agreement, and from all damages or penalties arising

out of the installation, construction, operation, or maintenance of Unite's private network and Facilities, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Agreement, except to the extent such damages or penalties result from the intentional or willful and wanton misconduct of the City or agent thereof. City shall not be liable for, and Unite shall indemnify, defend and hold the City harmless from all costs, damages and claims which arise from or relate to delay by Unite in performing its obligations hereunder, for any cause whatsoever, except for intentional or willful and wanton misconduct of the City. Unite also hereby agrees to pay all reasonable expenses of the City incurred by the City in defending itself with regard to any such damages, claims or penalties, including all out-of-pocket expenses, reasonable attorney' fees, and the reasonable value of any services rendered by the City Attorney, his assistants, or any employees of the City. Notwithstanding, the City shall defend and hold Unite harmless from any costs which arise from any claims that the City does not have authority to permit Unite's facilities within the City's Rights of Way.

2. The City will provide notice to Unite of the pendency of any claim or action against the City arising out of the operations of Unite, the exercise by Unite of its rights under this Agreement or the performance thereof by the Unite. Unite shall thereafter be required to appear and defend any such claim or action. Nothing herein stated shall limit Unite's obligation of full indemnification of the City hereunder.

#### Article IX - Insurance

Prior to commencement of any installation of Facilities under this Agreement, Unite shall procure and thereafter continuously maintain, for as long as this Agreement remains in effect, at Unite's expense, Commercial General Liability ("CGL") insurance in the amounts indicated in the City's Insurance Requirements for All City Contracts document, Exhibit B, covering liability arising from premises, operations, independent contractors, personal injury, products completed operations, and liability assumed under an insured contract, on an occurrence basis. Under the terms of the required CGL policy, this Agreement shall be defined as an insured contract. The policy shall identify the City as an additional insured, shall waive subrogation of claims against the City as an additional insured, and shall have all necessary endorsements to provide coverage without exclusion for explosion, collapse and underground property damage hazards. A certificate of insurance shall be filed with the City Attorney's office prior to commencement of installation of Facilities, which evidences compliance with the policy requirements stated above and provides for thirty (30) days prior written notice to City prior to cancellation or material change of any insurance referred to therein. In the event the certificate states that it confers no rights upon the certificate holder, the City may require Unite to furnish a complete copy of the policy including all declarations and endorsements.

#### Article X - Term

The term of this Agreement shall be for a period of thirty (30) years from and after the

date of the Agreement, unless sooner terminated as provided in this Agreement.

#### Article XI - Grant of Recipient Fibers

1. In consideration for the agreement to use public Rights of Way granted herein, and the grant of use of the City Conduit, and as compensation to the public for special use of such Rights of Way, Unite hereof grants to City an indefeasible right to use the Recipient Fibers for the Term. Such indefeasible right to use the Recipient Fibers may be referred to herein as the "IRU." The specific number of Recipient Fibers granted to City as part of the IRU at each location where a portion of the private network has been installed is depicted on the drawing attached hereto which is marked as Exhibit "A" and incorporated herein by reference.

2. Legal title to Unite's facilities including the fiber optic communications system, including fiber and cable sheathing and any bridge attachments, conduits, brackets, insulators, fixtures, guy wires, anchors, splice boxes, fiber distribution centers and other hardware needed or used to fasten or support the Cable shall be held by Unite. Neither anything contained in this Agreement, nor any use, however extended, of the Recipient Fibers, nor any placement of City's facilities on or in the private network shall create or vest (or be construed as creating or vesting) in City any right, title or interest in or to any real or personal property owned by Unite other than the IRU for the Recipient Fibers. Legal title to the City Conduit shall remain with the City, and nothing herein shall be deemed to relinquish City's right, title, interest or control of the public Right of Ways.

3. City shall have the right to pledge its rights and privileges contained in this Agreement, to secure financial obligations to third parties without the need to obtain consent from Unite. City shall keep Unite's facilities and other property subject to this Agreement free from any liens, rights or claims of any third party attributable to City that adversely affects or impairs Unite's exclusive ownership and use of its separate facilities or other property.

4. (a) City may not sell or lease "dark fiber", capacity or bandwidth on IRU fibers to third parties or resell or otherwise assign its rights and privileges contained in this Agreement to third parties.

(b) City shall be permitted to connect the Recipient Fibers to, and use the fiber for use and benefit of, City and all of City's elected bodies, departments, joint departments with the County, legal enterprises and affiliated entities which are established or created in whole or in part by City Charter, Ordinance or Resolution or interlocal agreement and which perform, in whole or in part, authorized functions of City government in either its propriety or governmental capacities.

(c) City agrees not to use the Recipient Fibers or allow the Recipient Fibers to be used in any manner that is commercially detrimental to Unite.

#### Article XII - Maintenance of Recipient Fibers

1. Maintenance.

(a) Unite shall maintain and repair the Recipient Fibers so as to assure continuing conformity of the Recipient Fibers with their respective operating specifications.

(b) Unite shall respond in a timely manner to any interruption of service or failure of the Recipient Fibers to operate in accordance with this Agreement.

(c) Unite shall splice the Recipient Fibers so as to assure continuing conformity with City specifications, including, without limitation, conducting surveillance of such facilities, location of faults, splicing and splice testing associated with any restoration, and procurement of replacement cable used in restoration. Splice configuration shall be provided to Unite by City and paid for by City as stated in Section 1.(e) below.

(d) Unite shall be responsible for routine maintenance of all cable, Unite's and the City's, in its Private Network and costs thereof not specifically due to requirements of City.

(e) City shall pay Unite all reasonable costs including a markup of 21% (which markup includes profit and overhead) incurred by Unite for any special work requested by City in writing and furnished by Unite to perform any special maintenance action on the Recipient Fibers. Costs shall include loaded labor, contractor, material and any other expenses directly associated with maintenance, conditioning and activation of Recipient Fibers.

(f) Unite shall be responsible for all One Call locates of their fiber whether in City conduits or in its own Private Network.

2. Relocation. If, during the Term of this Agreement, (a) Unite is required by a governmental authority with jurisdiction to relocate any portion of the private network, including any of the facilities used or required in providing the IRU in the Recipient Fibers, including any condemnation or taking under the power of eminent domain of all or any portion of the System, or (b) with City's concurrence upon Unite's request, Unite may relocate such portion of the private network then, Unite shall give City sixty (60) days prior notice of any such relocation, if possible, and shall have the obligation to proceed with such relocation, including, but not limited to, the right to determine the extent of, the timing of, and methods to be used for such relocation; provided that any such relocation shall be constructed and tested in accordance with the specifications and requirements set forth herein. Nothing in this section, however, shall be construed to limit or restrict City in requiring specific relocation arrangements, physical locations or materials in connection with City's control over public rights of way, including excavation permits.

Article XIII - Delivery, Use and Connection of Recipient Fibers



1. Delivery of Fibers. Unite agrees to deliver to City the Recipient Fibers within thirty (30) days of on or before the dates specified in Exhibit A

2. Access. Unite will provide City with access to the Recipient Fibers at such splice points on the System Route as reasonably requested by City subject only to the requirements in the Underlying Rights and provided that such access points do not materially interfere with any Unite facilities. Unite shall have unrestricted access to City Conduit identified in Exhibit A.

3. Use of Facilities. City may use the Recipient Fibers for its internal uses to provide any lawful telecommunications and data transmission, subject to the limitations of Article XI of this Agreement. City shall also not use the Recipient Fibers in any manner that is not in compliance with (i) any and all applicable government codes, ordinances, laws, rules, regulations and/or restrictions, and ((ii) the Underlying Rights, as such may be amended from time to time. City shall not use, any product or service that fails to comply with any applicable safety rules or that would cause Unite to violate any state or federal environmental laws. City shall have no limitations on the types of electronics or technologies employed to utilize the Recipient Fibers subject to its use of commercially reasonable safety procedures and so long as such electronics or technologies do not interfere with the quiet use and enjoyment of or create any risk of damage to all or any portion of the Private Network used by City or any other user of the Private Network.

4. Connection. If City desires to connect other fiber optic cables to the Recipient Fibers or create connections with buildings or other structures among the Private Network Route, Unite will cooperate with City for City to acquire access. City shall have the right to place its own connecting facilities within public rights of way between the Recipient Fibers and such adjoining properties. However, at the request of City, Unite will place connecting facilities within public rights of way between the Recipient Fibers and such adjoining properties, subject to the ability to do so pursuant to the Underlying Rights. Such placement of connecting facilities by Unite at the request of City shall be at City's sole cost and expense (including Costs incurred by Unite in providing oversight of any contractors excavating on the Rights of Way or near the Cable to make such connection) as contemplated in Section 1(e) of Article XII. Each connection to Provided Facilities requiring a Cable to be entered will be performed by Unite at City's sole expense as contemplated in Section 1(e) of Article XII. In order to schedule a connection of this type, City shall contact Unite to undertake the work at least fourteen (14) days in advance of the date the connection is requested to be Completed. Such work will be restricted to planned system work period weekends unless otherwise agreed to in writing for specific projects.

#### Article XIV - Indemnification and Representations

1. Unite's Indemnity. Unite shall indemnify, defend and hold harmless City, its officers, employees, elected officials, boards, commissions and any other legal entity affiliated with City from and against all Claims brought by third parties which any such indemnified Party

is required to pay or to assume which have resulted from Unite's breach of any duty or obligation imposed by law, including statutes, ordinances, regulations, orders, decrees, judgments and the law of torts (including without limitation gross negligence, strict liability, or willful misconduct), or this Agreement.

2. City's Immunities. Nothing in this Agreement is intended, nor shall it be construed, to create or extend any rights, claims or benefits to, or assume any liability for or on behalf of, any third party, or to waive any immunities or limitations otherwise conferred upon City under or by virtue of federal or state law.

3. Notice and Defense of Third-Party Actions. Each Person entitled to indemnification under this Article XIV (an "Indemnified Party") shall give prompt written notice to each Person that is obligated to provide such indemnification (an "Indemnifying Party") of the commencement or assertion of any Claim by a third party (collectively, a "third-party action") in respect of which an Indemnified Party will seek indemnification hereunder, which notice shall state, to the extent known to the Indemnified Party, the basis on which the claim for indemnification is made, the facts giving rise to or the alleged basis of the third-party action, and the amount (which may be estimated) of liability asserted by reason of the Claim; such notice shall also include a copy of the document (if any) by or in which the third-party action is commenced or asserted. Any failure so to notify the Indemnifying Party shall not relieve it from any liability that it may have to the Indemnified Party under this Article 6 unless the failure to give such notice materially and adversely prejudices the Indemnifying Party and then only to the extent of such prejudice. The Indemnifying Party shall have the right to assume control of the defense of or settle or otherwise dispose of such third party action on such terms as the Indemnifying Party deems appropriate; *provided, however*, that:

(a) The Indemnified Party shall be entitled, at its own expense, and without unreasonable interference with the actions of the Indemnifying Party, to participate in the defense of third-party actions;

(b) The Indemnifying Party shall obtain the prior written consent of the Indemnified Party before entering into any settlement, compromise, admission or any acknowledgment of the validity of a third-party action or any liability in respect thereof, which consent shall not be unreasonably withheld;

(c) No Indemnifying Party shall consent to the entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by each claimant or plaintiff to each Indemnified Party of a release from all liability in respect of such third-party action; and

(d) The Indemnifying Party shall not be entitled to control (but shall be entitled to participate at its own expense in the defense of) and the Indemnified Party shall be entitled to have sole control over, the defense or settlement, compromise, admission or other acknowledgment of any third-party action (i) as to which the Indemnifying Party fails to assume

the defense within a reasonable length of time or (ii) to the extent the third-party action seeks an order, injunction or other equitable relief against the Indemnified Party which, if successful, would have a material adverse effect on the business, financial condition, operations or properties of the Indemnified Party; provided, however, that the Indemnified Party shall make no settlement, compromise, admission or other acknowledgment which would give rise to liability on the part of the Indemnifying Party without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld.

4. Cooperation. The Parties shall cooperate with each other in the defense of any third-party action that is the subject of this Article XIV and shall furnish each other all such further information that they have the right and power to furnish as may reasonably be necessary to defend such third-party action.

5. Representations And Warranties. In addition to any other representations and warranties contained in this Agreement, each Party hereto represents and warrants to the other that:

(a) It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;

(b) It has taken all requisite corporate action to approve the execution, delivery and performance of this Agreement;

(c) This Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms; and

(d) Its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state or federal government agency, court, or body.

#### Article XV - Remedies, Termination, Removal

1. In the event of any breach of the terms of this Agreement by either party, the non-breaching party shall have the right to obtain one or more of the following remedies, which are expressly agreed to be cumulative, and the exercise of any one (1) or more of them shall not be dependent upon the exercise of any other remedy, nor does the exercise of any one or more of them constitute any bar or limitation to the exercise of any other: (a) specific performance or injunctive relief, (b) monetary damages, and (c) termination. In the event either party is required to commence an action to enforce its rights under this Agreement or to obtain remedies provided above and substantially prevails therein, such party shall be entitled to recover its costs, but excluding attorneys fees and expert witness fees.

2. Before terminating the Agreement for cause on account of any default, the non-defaulting party shall provide the party in default with written notice of the default and afford

such party a reasonable period in which to cure the default.

3. Upon expiration of the Term of this Agreement or termination, all rights of City to use of the Recipient Fibers shall concurrently terminate, and City shall promptly thereafter disconnect its equipment, power and other items from the Recipient Fibers.

#### Article XVI - Delays and Limitation of Liability

1. Delays. Under no circumstances shall either Unite or City ever be liable for any delay in restoring any service or Recipient Fibers or any operational aspect of the fiber optic systems containing such Recipient Fibers which has been subjected to an outage, interference or interruption, whatever the cause of such outage, interference or interruption, unless due to willful nonfeasance or willful misfeasance of such Party.

2. Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, in no event shall any Party to this Agreement be liable to any other Party for any special, incidental, indirect, punitive, reliance or consequential damages, whether foreseeable or not, arising out of, or in connection with, transmission interruptions or problems, including but not limited to, damage or loss of property or equipment, loss of profits or revenue, cost of capital, cost of replacement services, or claims of customers, whether occasioned by any repair or maintenance performed by, or failed to be performed by, any Party to this Agreement, or any other cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence, or strict liability. No claims for damages with respect to this Agreement may be made more than five (5) years after the date that the event giving rise to such claim is known or reasonably should have been known to the person or entity making such claim; and no claim for indemnity under the provisions of Section 6 hereof may be made more than five (5) years after the first notice of any claim received by the Party claiming under such indemnity provision.

#### Article XVII - Notices

Except as otherwise provided herein, notice under this Agreement shall be deemed sufficient if provided in writing and mailed or delivered as follows:

If to the City:	City of Lincoln City Clerk 555 S. 10 <sup>th</sup> Lincoln, NE 68508
with a copy to:	City Attorney's office
If to Unite:	Unite Private Networks, L LC Attention: Chief Executive Officer PO Box 25526

Kansas City, MO 64119

With a copy to: Lincoln Director of Enterprise Sales

Article XVIII - Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. No provision of this Agreement shall confer rights or benefits upon any person not a party hereto.

Article XIX - Signatures

The persons signing this Agreement on behalf of Unite represent and warrant that such persons and Unite have the requisite power and authority to enter into, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of Unite enforceable against Unite in accordance with its terms.

Article XX - Miscellaneous Provisions

1. Amendments. This Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by both Parties.

2. Limitation of Benefits. It is the explicit intention of the Parties hereto that no Person other than the Parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any Party hereto, and that covenants, undertakings, and agreements set forth in this Agreement shall be enforceable only by the Parties hereto or their respective successors or permitted assigns.

3. Severability. If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be held to be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or enforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of said agreement; provided, however, that if any such ineffectiveness or unenforceability of any provision of this Agreement, in the good faith judgment of either Party, renders the benefits to such Party of this Agreement as a whole uneconomical in light of the obligations of such Party under this Agreement as a whole, then Unite and City shall negotiate in good faith in an effort to restore insofar as possible the economic benefits of the transaction to the Parties.

4. Independent Contractors. In all matters pertaining to this Agreement, the relationship of Unite and City shall be that of independent contractors, and neither Unite nor City shall make any representations or warranties that their relationship is other than that of independent contractors. This Agreement is not intended to create nor shall it be construed to create any partnership, joint venture, employment or agency relationship between Unite and

City; and no Party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise. Each Party retains full control over the employment, direction, compensation and discharge of its employees, and will be solely responsible for all compensation of such employees, including social security, withholding and workers compensation responsibilities.

5. Labor Relations. Each Party hereto shall be responsible for labor relations with its own employees. Each Party agrees to notify the other immediately whenever it has knowledge that a labor dispute concerning its employees is delaying or threatens to delay timely performance of its obligations under this Agreement.

6. Exercise of Rights. No failure or delay on the part of either Party hereto in exercising any right, power or privilege hereunder and no course of dealing between the Parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any, other right, power or privilege.

7. Additional Actions and Documents. Each of the Parties hereto hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file or cause to be executed, acknowledged, delivered and filed such further documents and instruments, and to use its commercially reasonable efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.

8. Survival. The obligations of the Parties under Article IV, V, VII, VIII, XIV and XV shall survive any termination of this Agreement.

9. Headings. Article headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

10. Incorporation of Exhibits. The Exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written at length herein.

11. Governing Law. This Agreement and each of its provisions shall, be governed by and construed and interpreted according to the substantive laws of the State of Nebraska without regard to its conflicts of law or choice of law provisions.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which taken together shall constitute one and the same instrument.

13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the transaction contemplated herein, and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein.

14. Force Majeure. Neither party will be liable for the failure to fulfill its obligations under this Agreement if and to the extent such failure is caused by an occurrence beyond its reasonable control, including, without limitation: expropriation or confiscation of facilities, compliance with any order or decree of any governmental authority; acts of war or terrorism, floods or abnormal severe weather; riots, rebellion, or sabotage; fires or explosions; labor disputes, strikes, or other concerted acts of workmen; accidents or other casualty; and failures of utilities, local exchange carriers, cities, municipalities, and other political subdivision to follow laws, agreements, or contracts. Further, neither party will be liable for delays caused by the inaction of utilities, local exchange carriers, or other political subdivisions in granting access to rights of way, poles, or any other required items needed for the installation or operation of the Facilities.

IN WITNESS WHEREOF, Unite and the City have executed this Agreement as of the date first above written.

ATTEST:

\_\_\_\_\_  
City Clerk

[ S E A L ]

ATTEST:

\_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF LINCOLN,  
A Municipal Corporation

By: \_\_\_\_\_

President of City Council

UNITE:  
UNITE PRIVATE NETWORKS, LLC

By:  \_\_\_\_\_

Ron Reckrodt

Title: COO

**Exhibit A**  
**Project \_ST846\_\_**

**Project: City of Lincoln: Lincoln to Ashland project**

**FROM**

**Lincoln Water System:**

Pump Station at 51st and Cornhusker Highway

**TO**

**Ashland Wellfields:**

Island Wellfield

Platte River south of Highway 6 bridge

**Drops at the following:**

1. 51st and Cornhusker
2. Northeast Pump Station at 98th and Alvo Road
3. Greenwood Interconnect at Hwy 6 and Church Road.
4. Ashland Plant, in Ashland along Highway 6
5. Highway 6 bridge, one on each side of the road, Ashland side of the River
6. City's Island bridge drop, south of the Platte river bridge on Highway 6
7. Greenwood Pressure Regulating station, Davey Road, 1/2 mile east of Highway 6

**Description of Service:**

Unite Private Networks will be installing a fiber optic cable from the Lincoln Water System's Pump station at 51st and Cornhusker Highway to the eastern edge of the Lincoln City limits. From the eastern edge of the Lincoln City limits, portions of the fiber optic cable will be installed within the parameters of the City's 48 inch water pipeline easement which is generally located along Highway 6 from Lincoln to Ashland. The location of the fiber optic cable within the easement area shall be at the direction of the Lincoln Water System. The City shall be responsible for marking of the easements through professional land survey as is necessary to ensure UPN places the fiber on City Easement. UPN will provide fiber terminated at the Drop locations above to Fiber Distribution Panels (where available). UPN will install a tracer wire or other comparable medium along this complete route for any portion of this route that is built underground for the purpose of performing locates.

UPN will initially install 4 LEAF fibers within the conduit for the City's uses. If the City has need for more fibers, the City will be allowed up to an additional 4 LEAF fibers at the City's request. The City shall cooperate with UPN in determining the need for additional fibers. UPN will be responsible for all Maintenance, Locates, and repairs of these fibers for the duration of the agreement.

The City shall allow UPN to use one of the City's 4 inch ducts across the Platte River bridge on Highway 6.

**Project Engineering Drawings:**



See attached drawings Exhibit A Project ST846 for detailed project fiber construction for City of Lincoln to Ashland Project Fiber Expansion. UPN can make minor route changes as may be necessary provided all Drop locations are connected.

**Project Cost:**

UPN is offering three options for the City to pay for the additional work needed and support of the Fiber network for the term of 30 years. The City will allow UPN to use the right away and duct for UPN to provide the fiber service to the City of Lincoln.

1) The City will choose the one time Payment option (\$ 261,959.00 due in 2009).

**Acceptance and Authorization:**

By signing this contract, the undersigned hereby warrant:

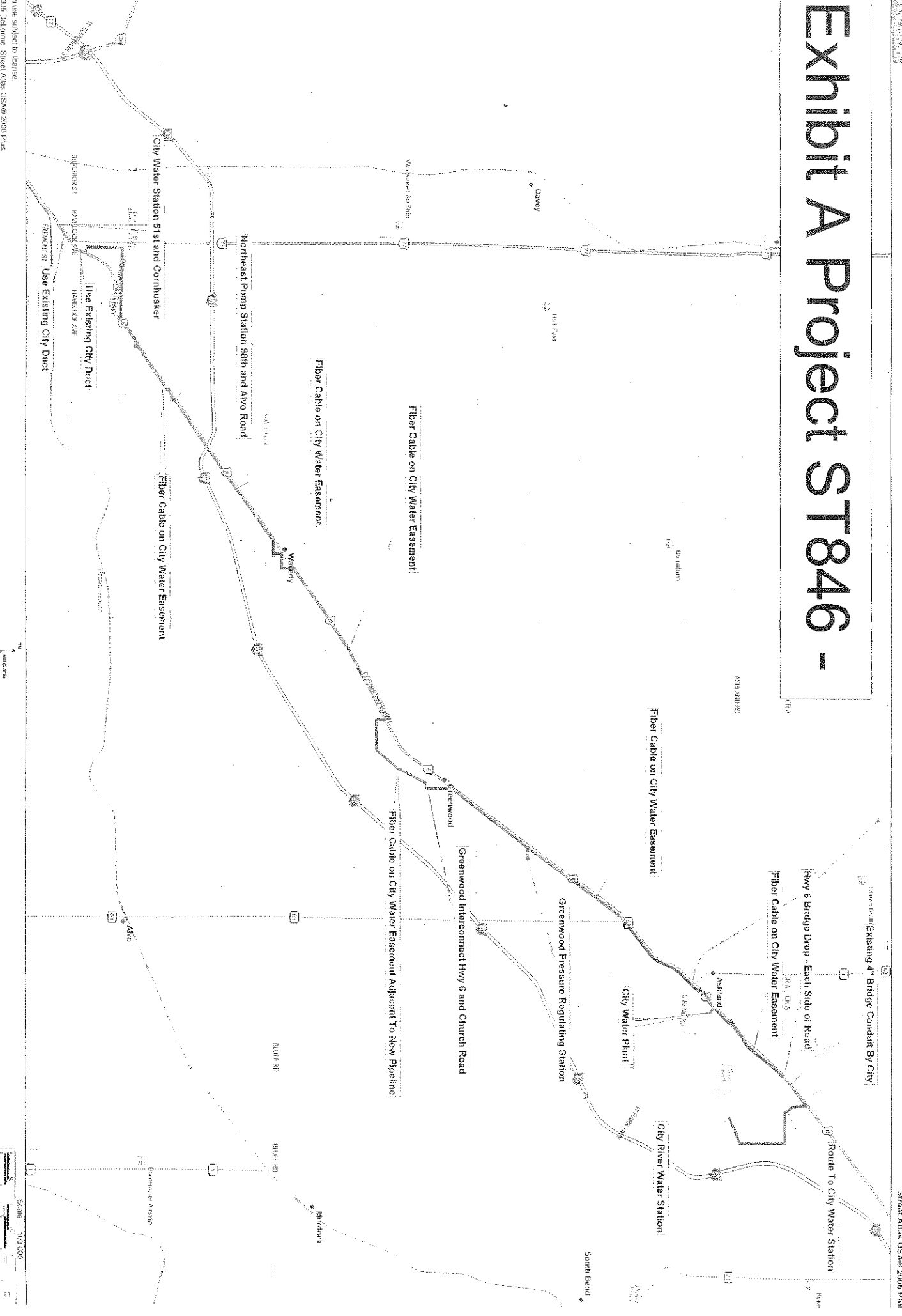
•that they are authorized agents of the City of Lincoln and Unite Private Networks, LLC, respectively;

•that they have the authority to enter into this Exhibit A on behalf of the parties to this Exhibit and;

•that they bind the parties to this Exhibit A Project ST846 to the terms contained in this Exhibit A.

We both agree that this contains the entire Exhibit A Project ST846 between Unite Private Networks, LLC and the City of Lincoln about the matters covered in this document. We both expressly agree that neither of us may assign or change this Exhibit A Project ST846 without the prior written consent of the other party. This Exhibit A Project ST846 shall be binding upon and inure to the benefit or the heirs, successors and assigns of the parties to this Exhibit.

# Exhibit A Project ST846 -



Not to scale. Use subject to license.

Scale 1" = 100,000'